

ASSEMBLY BILL

No. 2802

Introduced by Assembly Member Houston

February 22, 2008

An act to amend Section 11836 of the Health and Safety Code, and to amend Section 23103.5 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2802, as introduced, Houston. Vehicles: alcohol-related reckless driving.

(1) Existing law provides that, when a person is charged with, and pleads guilty or nolo contendere to, reckless driving in satisfaction of, or as a substitute for, an original charge for driving under the influence of an alcoholic beverage or drug (DUI), and the court accepts the plea of guilty or nolo contendere, the conviction is a prior offense for purposes of specified laws relating to punishments imposed for DUI convictions.

Under existing law, if a court places a person on probation for a conviction of alcohol-related reckless driving, the court is required to order that person to enroll in a licensed alcohol and drug education program and complete, at a minimum, the educational component of that program as a condition of probation. Existing law requires the Department of Motor Vehicles to include an evaluation of the effectiveness of that program in an annual report to the Legislature.

This bill would require a court to order a person convicted of alcohol-related reckless driving to participate for at least 9 months or longer, as ordered by the court, in a licensed program that consists of specified activities, including education, group counseling, and individual interview sessions, if that person has a prior conviction of a

violation of the alcohol-related reckless driving law or another specified DUI law and the prior convicted offense occurred within 10 years. The bill would require the Department of Motor Vehicles to additionally include in the annual report to the Legislature an evaluation of the effectiveness of that program.

The bill would require the court to revoke the person's probation for failure to enroll in, participate in, or complete the program.

This bill would increase the penalty for a conviction of alcohol related reckless driving, thereby imposing a state-mandated local program.

(2) Existing law authorizes the State Department of Alcohol and Drug Programs to issue, deny, suspend, or revoke the license of a driving-under-the-influence program that has been recommended by a county board of supervisors to provide alcohol or drug recovery services in that county to persons who have been convicted of violations of DUI laws, including persons who have been admitted to the program for alcohol-related reckless driving.

This bill would additionally include programs that provide alcohol or drug recovery services to persons who have been admitted to those programs for alcohol-related reckless driving with a prior conviction of a violation of the alcohol-related reckless driving law or another specified DUI.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11836 of the Health and Safety Code is
2 amended to read:
3 11836. (a) The department shall have the sole authority to
4 issue, deny, suspend, or revoke the license of a
5 driving-under-the-influence program. As used in this chapter,
6 "program" means any firm, partnership, association, corporation,
7 local governmental entity, agency, or place that has been initially
8 recommended by the county board of supervisors, subject to any
9 limitation imposed pursuant to subdivisions (c) and (d), and that

1 is subsequently licensed by the department to provide alcohol or
2 drug recovery services in that county to any of the following:

3 (1) A person whose license to drive has been administratively
4 suspended or revoked for, or who is convicted of, a violation of
5 Section 23152 or 23153 of the Vehicle Code, and admitted to a
6 program pursuant to Section 13352, 13352.1, 23538, 23542, 23548,
7 23552, 23556, 23562, or 23568 of the Vehicle Code.

8 (2) A person who is convicted of a violation of subdivision (b),
9 (c), (d), or (e) of Section 655 of the Harbors and Navigation Code,
10 or of Section 655.4 of that code, and admitted to the program
11 pursuant to Section 668 of that code.

12 (3) A person who has pled guilty or nolo contendere to a charge
13 of a violation of Section 23103 of the Vehicle Code, under the
14 conditions set forth in subdivision (c) of Section 23103.5 of the
15 Vehicle Code, and who has been admitted to the program under
16 subdivision (e) *or* (f) of Section 23103.5 of the Vehicle Code.

17 (4) A person whose license has been suspended, revoked, or
18 delayed due to a violation of Section 23140, and who has been
19 admitted to a program under Article 2 (commencing with Section
20 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

21 (b) If a firm, partnership, corporation, association, local
22 government entity, agency, or place has, or is applying for, more
23 than one license, the department shall treat each licensed program,
24 or each program seeking licensure, as belonging to a separate firm,
25 partnership, corporation, association, local government entity,
26 agency, or place for the purposes of this chapter.

27 (c) For purposes of providing recommendations to the
28 department pursuant to subdivision (a), a county board of
29 supervisors may limit its recommendations to those programs that
30 provide services for persons convicted of a first
31 driving-under-the-influence offense, or services to those persons
32 convicted of a second or subsequent driving-under-the-influence
33 offense, or both services. If a county board of supervisors fails to
34 provide recommendations, the department shall determine the
35 program or programs to be licensed in that county.

36 (d) After determining a need, a county board of supervisors may
37 also place one or more limitations on the services to be provided
38 by a driving-under-the-influence program or the area the program
39 may operate within the county, when it initially recommends a
40 program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place ~~any~~ restrictions on a program that would violate ~~any~~ a statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the department for licensure of a program by the county. It is not intended to affect ~~any~~ a license that has been previously issued by the department or the renewal of ~~any~~ a license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

SEC. 2. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) ~~When~~ *If* the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of ~~any~~ an alcoholic beverage or ingestion or administration of ~~any~~ a drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of ~~any~~ an alcoholic beverage or the ingestion or administration of ~~any~~ a drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of ~~any~~ *an* alcoholic beverage or the ingestion or administration of ~~any drugs~~ *a drug* by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622.

(e) ~~If~~ *Except as provided in paragraph (1) of subdivision (f), if* the court places the defendant on probation for a conviction of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, the court shall order the defendant to enroll in an alcohol and drug education program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code and complete, at a minimum, the educational component of that program, as a condition of probation. If compelling circumstances exist that mitigate against including the education component in the order, the court may make an affirmative finding to that effect. The court shall state the compelling circumstances and the affirmative finding on the record, and may, in these cases, exclude the educational component from the order.

(f) *(1) If the court places on probation a defendant convicted of a violation of Section 23103 that is required under this section to be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, and that offense occurred within 10 years of a separate conviction of a violation of Section 23103, as specified in this section, or within 10 years of a conviction of a violation of Section 23152 or 23153, the court shall order the defendant to participate for nine months or longer, as ordered by the court, in a program licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code that consists of at least 60 hours of program activities, including education, group counseling, and individual interview sessions.*

1 (2) *The court shall revoke the person's probation, except for*
2 *good cause shown, for the failure to enroll in, participate in, or*
3 *complete a program specified in paragraph (1).*

4 ~~(f)~~

5 (g) The Department of Motor Vehicles shall include in its annual
6 report to the Legislature under Section 1821 an evaluation of the
7 effectiveness of the ~~program~~ *programs* described in ~~subdivision~~
8 ~~(e)~~ *subdivisions (e) and (f)* as to treating persons convicted of
9 violating Section 23103.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.